

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 646**

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**Introduced by Assembly Member Swanson**

**(Coauthors: Assembly Members Beall, Buchanan, Chesbro, Coto, De Leon, *Evans*, Fong, Fuentes, *Furutani*, Hall, Jeffries, Lieu, Bonnie Lowenthal, Ma, Mendoza, Nava, Portantino, Price, ~~Ruskin~~, Salas, Skinner, and Torres)**

**(Coauthors: Senators DeSaulnier and Wiggins)**

February 25, 2009

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An act to amend Section 2401 of, and to repeal Section 2401.1 of, the Business and Professions Code, relating to healing arts.

### LEGISLATIVE COUNSEL'S DIGEST

AB 646, as amended, Swanson. Physicians and surgeons: employment.

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions, and makes it a crime to practice medicine without a license. Existing law establishes, until January 1, 2011, a pilot project to allow qualified district hospitals that, among other things, provide more than 50 percent of patient days to the care of Medicare, Medi-Cal, and uninsured patients, to employ a physician and surgeon, if the hospital does not interfere with, control, or otherwise direct the professional judgment of the physician and surgeon. The pilot project authorizes the direct employment of a total of 20 physicians and surgeons by those hospitals

to provide medically necessary services in rural and medically underserved communities, and specifies that each qualified district hospital may employ up to 2 physicians and surgeons, subject to specified requirements.

This bill would delete ~~the that pilot project, and would instead authorize a health care district, as defined, or a public or an independent community nonprofit hospital or clinic located in a medically underserved area, as specified, to employ physicians and surgeons if specified requirements are met and the district, hospital, or clinic does not interfere with, control, or otherwise direct the professional judgment of a physician and surgeon the health care district's service area includes a Medically Underserved Area (MUA) or a Medically Underserved Population (MUP), or has been federally designated as a Health Professional Shortage Area (HPSA); and the chief executive officer of the district provides specified documentation to the Medical Board of California. Upon receipt of that documentation, the bill would require the board to approve the employment of up to 5 primary or specialty care physicians and surgeons by the district, and, upon receipt of additional documentation after that employment, to approve an additional 5 primary or specialty care physicians and surgeons. The bill would provide that a district may, until December 31, 2020, enter into, renew, or extend any employment contract with a physician and surgeon for up to 10 years. The bill would require the Office of Statewide Health Planning and Development, in consultation with the State Department of Public Health and the board, to report to the Legislature by June 1, 2018, with regard to the efficacy of the employment of physicians and surgeons by health care districts, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 2401 of the Business and Professions
- 2 Code is amended to read:
- 3 2401. (a) Notwithstanding Section 2400, a clinic operated
- 4 primarily for the purpose of medical education by a public or
- 5 private nonprofit university medical school, which is approved by
- 6 the Division of Licensing or the Osteopathic Medical Board of
- 7 California, may charge for professional services rendered to
- 8 teaching patients by licensees who hold academic appointments

1 on the faculty of the university, if the charges are approved by the  
2 physician and surgeon in whose name the charges are made.

3 (b) Notwithstanding Section 2400, a clinic operated under  
4 subdivision (p) of Section 1206 of the Health and Safety Code  
5 may employ licensees and charge for professional services rendered  
6 by those licensees. However, the clinic shall not interfere with,  
7 control, or otherwise direct the professional judgment of a  
8 physician and surgeon in a manner prohibited by Section 2400 or  
9 any other provision of law.

10 (c) Notwithstanding Section 2400, a narcotic treatment program  
11 operated under Section 11876 of the Health and Safety Code and  
12 regulated by the State Department of Alcohol and Drug Programs,  
13 may employ licensees and charge for professional services rendered  
14 by those licensees. However, the narcotic treatment program shall  
15 not interfere with, control, or otherwise direct the professional  
16 judgment of a physician and surgeon in a manner prohibited by  
17 Section 2400 or any other provision of law.

18 (d) (1) Notwithstanding Section 2400, a health care district ~~that~~  
19 ~~is operated pursuant to Division 23 (commencing with Section~~  
20 ~~32000) of the Health and Safety Code may employ physicians and~~  
21 ~~surgeons, and may charge for professional services rendered by a~~  
22 ~~physician and surgeon, if the physician and surgeon in whose name~~  
23 ~~the charges are made approves the charges. However, the district~~  
24 ~~shall not interfere with, control, or otherwise direct a physician~~  
25 ~~and surgeon's professional judgment in a manner prohibited by~~  
26 ~~Section 2400 or any other provision of law.~~

27 ~~(e) Notwithstanding Section 2400, a public or an independent~~  
28 ~~community nonprofit hospital or clinic located in a medically~~  
29 ~~underserved area, as generally described in Part 5 of Chapter 1 of~~  
30 ~~Title 42 of the Code of Federal Regulations, or an area where~~  
31 ~~unmet priority needs for physicians and surgeons exist, as~~  
32 ~~determined by the California Healthcare Workforce Policy~~  
33 ~~Commission pursuant to Section 128225 of the Health and Safety~~  
34 ~~Code, with a patient census that consists of more than 50 percent~~  
35 ~~medically underserved populations, as defined in Section 127928~~  
36 ~~of the Health and Safety Code, may employ physicians and~~  
37 ~~surgeons, and may charge for professional services rendered by a~~  
38 ~~physician and surgeon, if the physician and surgeon in whose name~~  
39 ~~the charges are made approves the charges., and if all of the~~  
40 *following conditions are met:*

1 (A) *The service area of the health care district includes a*  
2 *Medically Underserved Area (MUA) or a Medically Underserved*  
3 *Population (MUP), or has been federally designated as a Health*  
4 *Professional Shortage Area (HPSA).*

5 (B) (i) *The chief executive officer of the health care district*  
6 *documents that the district has been actively attempting and unable*  
7 *to recruit a primary or specialty care physician and surgeon for*  
8 *any 12 consecutive month period, beginning on or after July 1,*  
9 *2008.*

10 (ii) *The chief executive officer submits an application to the*  
11 *board certifying the district's inability to recruit one or more*  
12 *physicians and surgeons, including all relevant documentation,*  
13 *certifying that the inability to recruit primary or specialty care*  
14 *physicians and surgeons has negatively impacted patient care in*  
15 *the community, and that the employment of physicians and*  
16 *surgeons by the district would meet a critical, unmet need in the*  
17 *community based upon a number of factors, including, but not*  
18 *limited to, the number of patients referred for care outside of the*  
19 *community, the number of patients who experienced delays in*  
20 *treatment, the length of treatment delays, and negative patient*  
21 *outcomes.*

22 (2) *Upon receipt and review of the certification of the district's*  
23 *inability to recruit a physician and surgeon as specified in*  
24 *subparagraph (B) of paragraph (1), the board shall approve and*  
25 *authorize the employment of up to five primary or specialty care*  
26 *physicians and surgeons by the district.*

27 (3) *Upon receipt and review of subsequent certification of the*  
28 *need for additional primary or specialty care physicians and*  
29 *surgeons by the district, the board shall approve and authorize*  
30 *the employment of up to five additional primary or specialty care*  
31 *physicians and surgeons by the district.*

32 (4) *Employment contracts with physicians and surgeons issued*  
33 *pursuant to this subdivision shall be for a period of not more than*  
34 *10 years, but may be renewed or extended. Districts may enter*  
35 *into, renew, or extend employment contracts with physicians and*  
36 *surgeons pursuant to this subdivision until December 31, 2020.*

37 (5) *The Office of Statewide Health Planning and Development,*  
38 *in consultation with the State Department of Public Health and*  
39 *the board, shall conduct an efficacy study of the program under*  
40 *this subdivision to evaluate improvement in physician and surgeon*

1 *recruitment and retention in the districts participating in the*  
2 *program, impacts on physician and surgeon and health care access*  
3 *in the communities served by these districts, impacts on patient*  
4 *outcomes, degree of patient and participating physician and*  
5 *surgeon satisfaction, and impacts on the independence and*  
6 *autonomy of medical decisionmaking by employed physicians and*  
7 *surgeons. This study shall be completed and its results reported*  
8 *to the Legislature no later than June 1, 2018.*

9 ~~(f) The hospitals or clinics~~

10 (e) A health care district authorized to employ physicians and  
11 surgeons pursuant to subdivision ~~(e)~~ (d) shall not interfere with,  
12 control, or otherwise direct a physician and surgeon's professional  
13 judgment in a manner prohibited by Section 2400 or any other  
14 provision of law. Violation of this prohibition is punishable as a  
15 violation of Section 2052, by a fine not exceeding ten thousand  
16 dollars (\$10,000), by imprisonment in the state prison, by  
17 imprisonment in a county jail not exceeding one year, or by both  
18 the fine and either imprisonment. This subdivision is declaratory  
19 of existing law, and, as such, does not create a new crime or expand  
20 the scope of any existing crime.

21 SEC. 2. Section 2401.1 of the Business and Professions Code  
22 is repealed.